IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1546 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

INDUKUMAR ASANDAS SHARMA

Versus

DISTRICT MAGISTRATE PANCHMAHAL

Appearance:

1. Special Civil Application No. 1546 of 2004

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MS AC RAVAL, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 22/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 15-01-2004, by

which he is detained under P.A.S.A. as a "bootlegger". Along with the said order, the petitioner is served with the grounds of detention. In the grounds of detention, there is a reference about five criminal cases registered against the petitioner. All these cases are registered under the Bombay Prohibition Act. The detaining authority has also recorded statements of some secret witnesses. It is alleged that the petitioner is preparing and keeping country liquor at his residence and is dealing in the same. The detaining authority, after considering the material on record, has passed the order of detention, which is impugned in this petition.

2) Mr.Kamlesh Kacchavah, learned advocate for the petitioner, submitted that the last incident registered against the petitioner is of 2nd October 2003, and in connection with that case the petitioner was released on bail on 6th October, 2003 and after a considerable time of three months and ten days, the order of detention was passed on 15-01-2004. He submitted that the statements of witnesses are recorded only to cover up the delay in passing the order of detention. He further submitted that if the activities of the petitioner are so dangerous, it was not necessary for the authority to wait for such a long time in passing the detention order and on the ground of delay, the order of detention is required to be set aside.

3) To substantiate his say, learned advocate for the petitioner has relied upon the decision of this Court in Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City & Others reported in 1997 (1) G.L.H. 381 wherein this Court has observed in Para 21 as under:-

> "21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appeared to be some substance in the

> contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993(2) Suppli. SCC 61."

4) Unfortunately, no affidavit in reply has been filed by the authority explaining the delay in passing the detention order nor any file is made available for the perusal of the Court. Therefore, the averment made in the petition is not controverted by the authority. Under these circumstances, there is no alternative but to set aside the order of detention on the ground of delay in passing the detention order from the date of last incident.

5) At this stage, Mr.Kacchavah, learned advocate for the petitioner, has voluntarily made a statement that the petitioner will not enter Godhra town upto 30th September, 2004. This voluntary statement is recorded. In view of this statement, the police authority is directed to monitor whether the petitioner is entering Godhra town or not.

6) For the foregoing reasons, this petition is allowed. The order of detention dated 15-01-2004 is quashed and set aside. The detenu, Indukumar Asandas Sharma is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)

/malek